

Remarks

Claims 1-35 are pending in the application. In light of the Applicants' election with traverse of Invention I, claims 36-70 have been canceled without prejudice. Importantly, the Applicants expressly reserve the right to prosecute in subsequent divisional applications or continuing applications or both claims covering the subject matter of the claims canceled to conform with the Applicants' election in response to the Restriction Requirement. 35 U.S.C. §§ 120-121.

An unexecuted Declaration under 37 CFR § 1.131 is submitted herewith, antedating the U.S. patent relied upon by the Examiner in the outstanding claim rejections. Unfortunately, due to the current unavailability of the inventors, and the time required to retrieve from storage the laboratory notebooks from which excerpts will be drawn in support of the Declaration, the Applicants are unable at this time to submit a complete, executed Declaration. However, the Applicants will forward the complete, executed Declaration to the Examiner in the near future.

Claim Rejections Based on 35 USC § 102(e)

Claims 1-35 stand rejected under 35 U.S.C. § 102(e), based on the Examiner's contention that they are anticipated by Hartwig et al., United States Patent 6,057,456 ("the '456 patent"). Specifically, the Examiner contends that the claimed invention is substantially disclosed in the '456 patent.

The '456 patent issued on May 2, 2000, based on a utility application filed October 15, 1998; which claimed priority to a provisional application filed October 16, 1997. Therefore, October 16, 1997 is the earliest effective filing date that may be attributed to the '456 patent.

The instant application is a continuation-in-part application filed on January 27, 1999; which claims priority to a utility application filed November 20, 1998; which claimed priority to a provisional application filed November 20, 1997. Therefore, the effective filing date of the instant application is November 20, 1997.

Importantly, the Applicants assert that, prior to the effective date of the '456 patent, they reduced to practice in the United States the subject matter of rejected claims 1-35. In support of this assertion, the Applicants submit herewith an unexecuted Declaration under 37 CFR § 1.131 that, when executed and accompanied by the pertinent laboratory notebook pages, will antedate

the '456 patent. The Applicants sincerely apologize for the facts that the aforementioned Declaration is unexecuted and not accompanied by the pertinent laboratory notebook pages. However, the inventor who will both execute the Declaration and provide the supporting laboratory notebook pages is currently unavailable. Therefore, the Applicants respectfully request that the Examiner allow the Applicants a reasonable amount of time to gather the pertinent laboratory notebook pages and obtain the inventor's signature on the Declaration.

Accordingly, withdrawal of the rejections under 35 U.S.C. § 102(e) is respectfully requested.

Claim Rejections Based on 35 USC § 103(a)

Claims 1-35 also stand rejected under 35 U.S.C. § 103(a), based on the Examiner's contention that they are obvious in light of the '456 patent. However, based on the discussion in the preceding section, the Applicants respectfully contend that the '456 patent may no longer form the basis of a valid rejection under 35 U.S.C. § 103(a).

Accordingly, withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

Conclusion

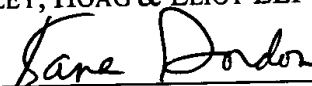
In view of the above amendments and remarks, it is believed that the pending claims are in condition for allowance. If a telephone conversation with Applicants' Agent would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned at (617) 832-1000.

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Respectfully submitted,
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